

1 MELODIE A. WHITSON (WA SBN 42100)  
2 SHANNON L. KINGSTON (WA SBN 38626)  
3 JESSE A. P. BAKER (WA SBN 36077 )  
CHAPTER: 7  
3 PITE DUNCAN LLP  
14510 NE 20th Street, #203  
4 Bellevue, WA 98007  
Telephone: (425) 644-6471

HEARING DATE: January 7, 2011  
HEARING TIME: 9:30 A.M.  
RESPONSE DATE December 31, 2010

6 **Mailing Address:**  
7 4375 Jutland Drive, Suite 200  
P.O. Box 17933  
8 San Diego, CA 92177-0933  
Telephone: (858) 750-7600  
Facsimile: (619) 590-1385

10 UNITED STATES BANKRUPTCY COURT

11 WESTERN DISTRICT OF WASHINGTON - SEATTLE DIVISION

12 In re

13 JEFFREY JEROME CAINS AND  
MICHELLE LOUISE CAINS ,

Case No. 10-19454-MLB

Chapter 7

14 DECLARATION IN SUPPORT OF  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

16 Debtor(s).

18 I, Joseph Cartwright, declare:

19 1. I am employed as a Bankruptcy Specialist by GMAC Mortgage, LLC ("Movant"). I  
have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I  
could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding  
Movant's interest in the real property that is the subject of this Motion.

20 2. I am familiar with the manner and procedures by which Movant's business records  
are obtained, prepared, and maintained. Those records are obtained, prepared, and maintained by  
Movant's employees or agents in the performance of their regular business duties at or near the time,  
and conditions, and/or events recorded thereon. The records are made either by persons with  
knowledge of the matters they record or from information obtained by persons with such knowledge.  
I have knowledge and/or access to Movant's business records regarding the Note and Deed of Trust

1 that are the subject of this action and have personally reviewed these business records prior to  
2 executing this declaration.

3       3.       On or about May 1, 2007, Jeffrey Jerome Cains and Michelle Louise Cains  
4 ("Debtors"), for valuable consideration, made, executed and delivered to Homecomings Financial,  
5 LLC (f/k/a Homecomings Financial Network, Inc.) ("Lender") a Note in the principal sum of  
6 \$176,000.00 (the "Note"). Pursuant to the Note and any endorsements, Debtors are obligated to  
7 make monthly principal and interest payments commencing July 1, 2007, and continuing until June  
8 1, 2037, when all outstanding amounts are due and payable. The Note provides that, in the event of  
9 default, the holder of the Note has the option of declaring all unpaid sums immediately due and  
10 payable. A copy of the Note is attached hereto as exhibit A and incorporated herein by reference.

4. Movant qualifies as the Note holder with standing to prosecute the instant Motion as;

12                   **a.**           Lender indorsed the Note in blank, thereby converting the Note to a  
13 bearer instrument and Movant is currently entitled to possession of the indorsed in blank Note.

14 || OR;

15                   **b.**     ☒     Lender specially indorsed the Note to Movant and Movant is currently  
16 entitled to possession of the specially indorsed Note.

17       5.      On or about May 1, 2007, the Debtors made, executed and delivered to Lender a  
18 Deed of Trust (the "Deed of Trust") granting Lender a security interest in real property commonly  
19 described as 32405 1st Place South #31 Unit #31, Federal Way, Washington 98003 (the "Real  
20 Property"), which is more fully described in the Deed of Trust. The Deed of Trust provides that  
21 attorneys' fees and costs incurred as a result of the Debtors' bankruptcy case may be included in the  
22 outstanding balance under the Note. The Deed of Trust was recorded on May 8, 2007, in the Official  
23 Records of King County, State of Washington. A copy of the Deed of Trust is attached hereto as  
24 exhibit B and incorporated herein by reference.

25       6. Subsequently, Lender's beneficial interest in the Deed of Trust was sold, assigned and  
26 transferred to Movant. A copy of the Corporation Assignment of Deed of Trust evidencing the  
27 Assignment of the Deed of Trust to Movant is attached hereto as exhibit C and incorporated herein  
28 by reference.

1       7. As a result of the default under the Note, a Notice of Default was posted on the  
2 subject property and mailed to the Debtors on July 1, 2010. Movant recorded its Notice of Sale on  
3 August 3, 2010. There is no pending foreclosure activity by Movant.

4       8. The obligation under the Note is in default as of March 1, 2010 for failure to make  
5 payments to Movant. As of August 17, 2010, the total principal due and owing under the Note is in  
6 the approximate amount of \$170,201.46. This is an approximate amount for purposes of this Motion  
7 only, and should not be relied upon as such to pay off the subject loan as interest and additional  
8 advances may come due subsequent to the filing of the Motion. An exact payoff amount can be  
9 obtained by contacting Movant's counsel. Further, Movant has incurred additional post-petition  
10 attorneys' fees and costs in bringing the instant Motion. Moreover, the total arrears under the Note  
11 are in the approximate sum of \$9,294.28, consisting of four (4) payments from March 1, 2010  
12 through June 1, 2010 in the amount of \$1,332.63, three (3) payments from July 1, 2010 through  
13 September 1, 2010 in the amount of \$1,285.86, late charges in the amount of \$54.18, and expense  
14 advances in the amount of \$52.00, excluding the post-petition attorneys' fees and costs incurred in  
15 filing the instant Motion.

16       9. I am informed and believe that, based on the Debtors' bankruptcy Schedules and  
17 Statements, the fair market value of the Property is \$190,000.00. True and correct copies of the  
18 Debtors' bankruptcy Schedules "A" and "D" are collectively attached hereto as exhibit D and  
19 incorporated herein by reference.

20       Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$190,000.00
Less:	
Movant's Trust Deed	\$170,201.46
US Bank's 2nd Deed of Trust	\$35,377.00
Costs of Sale (8%)	<u>\$15,200.00</u>
Equity in the Property:	<\$30,778.46>

25       //.  
26       //.  
27       //.  
28       //.

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed this 27 day of October, at Fort  
3 Washington, Pennsylvania.

Joseph Cartwright

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28